

1 MR. SCHMIDT: May I just take a
2 look at those?

3 MR. MOSS: Sure. Absolutely.

4 JUDGE SIPPEL: For what purpose?
5 Yes, show them to Mr. Schmidt while we're
6 talking here. What would be the purpose of
7 showing him notes that were taken by Tennis
8 Channel?

9 MR. MOSS: Well, Your Honor, these
10 are notes of the call that Mr. Donnelly had
11 with Tennis Channel.

12 JUDGE SIPPEL: Right.

13 MR. MOSS: And I'd like to refresh
14 his recollection if I can as to what he said
15 to the Tennis Channel as far as describing the
16 analysis that he performed and the information
17 that he related to them about his analysis.

18 JUDGE SIPPEL: He had nothing to
19 do with preparing -- they may be totally
20 contrary to what his recollection is. I think
21 I'd start off with his recollection and see
22 how well he can do with his recollection

1 before we wrestle with this one.

2 MR. MOSS: Okay.

3 JUDGE SIPPEL: Do you see what I'm
4 saying?

5 MR. MOSS: Absolutely.

6 MR. CARROLL: Just to note, these
7 are in the record already, these notes. These
8 notes have been admitted as an exhibit. And
9 these notes are their recording of the
10 briefing that the witness gave them. So there
11 can't be any confidential information issue.
12 They got this information from our side.

13 JUDGE SIPPEL: I am sorry, I
14 didn't mean to interrupt you. I'm not on that
15 line at all. I'm simply saying is that
16 they're not his notes and so far he hasn't
17 indicated he can't remember something. He --
18 well, let's see how well he does.

19 The second question is they've
20 been
21 -- they were received in evidence, is that
22 correct?

1 MR. MOSS: Yes, Your Honor.

2 MR. CARROLL: In the document
3 admission session, Your Honor.

4 JUDGE SIPPEL: Which was on the
5 20th.

6 Did this particular witness see the document
7 already?

8 MR. MOSS: No, Your Honor.

9 JUDGE SIPPEL: Let's see how he
10 goes. Let's see how it goes. I'd like a copy
11 of that, too, by the way, please.

12 MR. MOSS: I'm sorry, I thought I
13 handed it up to you. They're also in your
14 binder.

15 JUDGE SIPPEL: You mean C? Thank
16 you. Thank you. Oh yes, I'm sorry. These
17 are
18 -- no, let me just say what you gave me. I'm
19 just curious as to what this is all -- go
20 ahead. Go ahead.

21 MR. CARROLL: Those are in the
22 white binder as well, Your Honor.

1 JUDGE SIPPEL: That inches them up
2 a bit. Thank you. Thank you, Mr. Carroll.
3 These do look familiar.

4 BY MR. MOSS:

5 Q Now Mr. Donnelly, do you recall
6 whether or not you had a discussion with the
7 folks at Tennis Channel regarding what you did
8 to their advertising projections?

9 A I recall we had a conversation. I
10 don't remember the specifics of it, but my
11 assumption is I would have walked them through
12 the underlying assumptions that were in this
13 deck and behind the model. That would have
14 been the reason to have a call.

15 JUDGE SIPPEL: Is there any
16 objection to showing this to the witness?

17 MR. SCHMIDT: Not on the highly
18 confidential grounds, Your Honor. I do think
19 the point Your Honor raised is correct. These
20 aren't his notes, but we don't object to him
21 showing them.

22 JUDGE SIPPEL: All that goes to

1 weight and maybe whatever other considerations
2 arise here. But let's have it -- it's already
3 in evidence.

4 MR. MOSS: Yes, Your Honor.

5 JUDGE SIPPEL: Let's show it to
6 the witness. And ask him -- well, ask him
7 whatever you want to ask him first. And I
8 have something I want to ask him. I'll ask
9 him right up front. Take a look at this
10 document and tell me if you have ever seen it
11 before? Even in connection with your
12 testimony here today?

13 THE WITNESS: No, I have not.

14 JUDGE SIPPEL: All right, go
15 ahead. Take your time. Take your time. You
16 tell him how you want to use it.

17 MR. MOSS: Thank you, Your Honor.

18 BY MR. MOSS:

19 Q Mr. Donnelly, I'd like to direct
20 your attention to the second page.

21 A The second page?

22 Q Yes, sir.

1 A The page that you handed me?

2 Q Yes, that's correct.

3 JUDGE SIPPEL: We've got Bates
4 numbers, is it 171 or 172?

5 MR. MOSS: It's 172, Your Honor.

6 THE WITNESS: That's what I have.

7 BY MR. MOSS:

8 Q And Mr. Donnelly, at the top I
9 think this says "Comcast call after they
10 passed 8/10/06." Am I reading that correctly?

11 A That's how I read it.

12 Q And it says Joe Donnelly and Ann
13 Micka up at the top?

14 A That would be Ann that was working
15 with me.

16 Q And Mr. Donnelly, August would be
17 just -- August '06 would be just shortly
18 thereafter you prepared this back in July of
19 '06. Is that right?

20 A That's what it would seem to be.

21 Q And Mr. Donnelly, do you recall
22 explaining -- does this refresh your

1 recollection --

2 A Let me just finish here.

3 JUDGE SIPPEL: Take your time.

4 Take your time.

5 (Pause.)

6 THE WITNESS: Okay.

7 JUDGE SIPPEL: Before he gets into
8 the substance, do you recognize that
9 handwriting at all?

10 THE WITNESS: I do not.

11 JUDGE SIPPEL: The fact that your
12 name and Ms. Micka's name are up on the right,
13 does that mean anything to you?

14 THE WITNESS: Well, I'm assuming
15 Ann and I were on the call. This is my guess.

16 JUDGE SIPPEL: I'm sorry. You've
17 explained it. Go right ahead.

18 BY MR. MOSS:

19 Q Mr. Donnelly, do you recall
20 explaining to The Tennis Channel, does this
21 refresh your recollection that you walked them
22 through your discounted cash flow valuation?

1 A It confirms what I suggested.

2 This is probably what we had talked about
3 which seems to be exactly what was in this
4 deck for all intents and purposes.

5 Q And it says under the fourth dash
6 under getting. It says "use base case subs."

7 A "Use base case subs."

8 Q Do you have an understanding of
9 what that means?

10 A Base case subs would be the
11 subscriber forecast that The Tennis Channel
12 provided to us.

13 Q So does that mean that, as you
14 testified, before that Comcast adopted Tennis
15 Channel's subscriber projections?

16 A That's correct.

17 Q And the next bullet point says
18 "thought ad sales were too high compared to
19 Golf Channel's ■ million subs" subscribers --
20 "which is better for advertising."

21 A Right.

22 Q And it says "they lowered our ad

1 sales."

2 A That's what we did.

3 Q Do you have an understanding of
4 what these notes mean based on the fact that
5 you were on this call?

6 A It appears to be what we were
7 doing as we were relaying to them our view
8 about their assumptions and the chief
9 assumption that we changed was advertising.
10 And this is consistent with what we were
11 talking about earlier and it was our view that
12 their advertising that they had in their model
13 was too high. And probably what we were doing
14 is saying even compared to The Golf Channel
15 which we think, you know, is a pretty good
16 network for advertising, they were not just
17 out of line, so we lowered their ad sales.

18 Q Mr. Donnelly, is there anything on
19 this page which is inconsistent with the
20 analysis that you performed?

21 A Anything on this page -- let me
22 just read it one more time.

1 (Pause.)

2 Well, it looks like we said are
3 you doing these launches anyway and the answer
4 is no. So I mean that was consistent with the
5 way we looked at the cost. It looks to me
6 reasonably consistent with the way we did the
7 analysis.

8 Q We're done with that exhibit for
9 now, Mr. Donnelly.

10 A Okay.

11 Q Mr. Donnelly, did the 2006 equity
12 offer that Tennis Channel made to Comcast lead
13 to any further analysis of The Tennis
14 Channel's equity?

15 A It did. As a result of the idea
16 of equity for carriage it began to get a
17 number of us thinking and we started to
18 discuss are there ways that we can use this
19 carriage for equity as a way to kind of create
20 a win-win situation for The Tennis Channel or
21 for Comcast and maybe the USTA as well.

22 Q And you mentioned the USTA, how

1 does the USTA fit into the picture?

2 A The USTA is the rights holders to
3 at least the U.S. Open and at one point in
4 time we had thought or considered should we
5 look at trying to obtain the rights for the
6 U.S. Open for Versus. So it fits into this
7 deal because we were trying to construct a
8 structure based upon this carriage for equity
9 proposal that was being made to us as a way to
10 say okay, maybe we could use some of that
11 carriage for equity as a way to get The Tennis
12 Channel its increased distribution and get
13 their rights under Versus and get the USTA a
14 little bit extra equity in The Tennis Channel.

15 Q I'd like to take that in pieces,
16 but let me just come back. You said earlier
17 that there were a lot of ideas that were
18 kicking around back and forth. Do you recall
19 whether or not this specific proposed
20 transaction involving the USTA that you've
21 been discussing was an idea that came from
22 Tennis Channel or came from Comcast?

1 A I don't know specifically where it
2 came from. I heard about it first from the
3 Programming Division, but I don't know where
4 it came from.

5 Q And can you explain for us what
6 this proposal would be that would involve a
7 deal, I think, among The Tennis Channel, USTA
8 and Comcast? Is that right?

9 A Right. So there were a number of
10 ideas that were being bantered back and forth
11 between us, but the construct that I'm
12 thinking most about was one where Comcast
13 Cable would give carriage to Tennis Channel
14 like it was asking for and in exchange Comcast
15 Cable would get the equity that The Tennis
16 Channel was offering. We would take that
17 equity and then give it to the USTA as part of
18 the consideration to get rights to the U.S.
19 Open.

20 So the magic of it all was we
21 valued the equity in The Tennis Channel about
22 ■ million and we believed that other people

1 valued it higher, so if I could give the USTA
2 something that I thought was worth ■, but they
3 attributed it a value of -- make up a number,
4 ■ million to it, there was a win-win for
5 everybody. Tennis Channel got the carriage
6 that they were looking for. Versus was able
7 to get the rights to the U.S. Open and The
8 Tennis Channel got more equity -- I mean USTA,
9 I'm sorry, the USTA got more equity in The
10 Tennis Channel. So it was kind of a neat
11 construct to have everybody come out with what
12 they conceivably could have wanted.

13 Q You say "more equity." Did the
14 USTA already have equity in The Tennis Channel
15 prior to this deal?

16 A I believe they did, yes.

17 Q What was the basis for Comcast
18 believing that the USTA might value the equity
19 in Tennis Channel more than Comcast?

20 A We just know when we did the
21 valuation that The Tennis Channel had valued
22 itself more highly than we had valued it and

1 that some of its prior rounds of investors had
2 valued it a little bit more highly. So we
3 thought that there was a possibility that
4 people out there might value it more highly
5 than we thought it was really worth.

6 Q And presumably would that include
7 the USTA because they were already an
8 investor?

9 A I mean we didn't know for sure,
10 but it was an idea that was being bantered
11 around.

12 Q Did you revisit the modeling of
13 The Tennis Channel's equity in connection with
14 this potential transaction?

15 A Say -- can you ask that again?

16 Q Sure. Did you revisit the model
17 that you had done in July, in the summer of
18 2006 in connection with this potential
19 transaction?

20 A Yes, because this was probably
21 later that year so if this deck was in July
22 and that was towards the end of the year and

1 I'm sure what we did was we went back to the
2 valuation that had just been a couple of
3 months old at that point in time.

4 MR. MOSS: Your Honor, may I
5 approach?

6 JUDGE SIPPEL: Yes, you may.

7 MR. MOSS: I'd like to mark a
8 document which is already in evidence. It's
9 The Tennis Channel 34.

10 JUDGE SIPPEL: Thank you. This is
11 in evidence?

12 MR. MOSS: It is, Your Honor.

13 (Pause.)

14 BY MR. MOSS:

15 Q Mr. Donnelly, can you identify --
16 after you've had a moment to look at this
17 document, can you identify this document for
18 us?

19 A Sure. This is an email exchange,
20 December 19, 2006. The first one was from me
21 to Jeff Shell who is my boss. He was the
22 president of the Program Division at Comcast,

1 Gavin Hervey was the president of Versus, and
2 Marc Fein, who was in charge of programming
3 for Versus. So it was an email giving
4 primarily Jeff, but I guess all three, giving
5 them an overview of how we valued the company
6 back in July and then how we thought The
7 Tennis Channel was value itself, hence, the
8 incremental, and then the structure that I
9 just walked you through. And then Jeff
10 responding a couple of days later saying why
11 don't you work with Marc Fein who is the
12 programming person at Versus and see if we can
13 sit down and work up something like this?

14 Q Thank you. Mr. Donnelly, you
15 referenced the first email. That's the first
16 email in time which is actually the bottom
17 email in this chain?

18 A Right. I'm sorry, that's right.

19 Q And you start this email, you say,
20 "Here's a quick summary of" -- "Here's a quick
21 summary of the quick valuation we did of The
22 Tennis Channel earlier this year under Comcast

1 and TTC assumptions." And what follows -- is
2 what follows the summary that 2006 valuation?

3 A Yes, it's an analysis of the
4 assumption, the valuation under our
5 assumptions and an analysis under their
6 assumptions that they have provided to us.

7 Q I'd like to direct your attention
8 to the second bullet point which says "Value
9 if TTC remains on Comcast's sports tier. The
10 company has no value." Can you explain for us
11 what you meant by that statement?

12 A Sure. You have to look at it in
13 the context of the heading and the heading
14 says "value under Comcast assumptions." So
15 what we're saying is -- as I walked you
16 through, we set up a model and we accepted The
17 Tennis Channel's assumptions virtually every
18 row with the exception of advertising. And so
19 we set them and then we just toggled one
20 variable. We said what's the network worth if
21 it gets the incremental [REDACTED] million from subs,
22 from Comcast, and what's its worth if it

1 doesn't? And what we said if it gets the
2 extra [REDACTED] million subs, it's worth, in our
3 mind about [REDACTED] million. And if it doesn't, it
4 had no value. It was not intended to say the
5 company has no value if it's on Comcast sports
6 tier.

7 The point was it has value with an
8 extra [REDACTED] million subscribers. It could get
9 those subscribers from Comcast, like it was
10 asking. It could get those subscribers from
11 any other operator. It only had about [REDACTED]
12 [REDACTED] subscribers at the time. It could
13 have gotten [REDACTED] subscribers from [REDACTED]
14 operators and still gotten [REDACTED] million subs
15 and in our financial model still would have
16 been worth [REDACTED] million. This is not intended
17 to say the company has no value if it stays on
18 Comcast's sports tier.

19 JUDGE SIPPEL: Could I paraphrase
20 that to make sure I'm understanding?

21 MR. MOSS: Of course, Your Honor.

22 JUDGE SIPPEL: Are you really

1 saying that the deal would have the value if
2 you got the extra subs, but it wouldn't have
3 any -- the deal would not add value. Is that
4 too simple?

5 THE WITNESS: No, I don't think
6 it's too simple. The way I would paraphrase
7 it is an extra [REDACTED] million subscribers are
8 worth about [REDACTED] million in value. And it just
9 so happens that without them we personally
10 didn't think the network had value, but if it
11 got an extra [REDACTED] million subscribers from
12 anybody, you would create about [REDACTED] million of
13 value there. But the only thing in our model
14 that we toggle was the only thing we were
15 asked to toggle which was Comcast. Does that
16 make sense?

17 JUDGE SIPPEL: Yes.

18 BY MR. MOSS:

19 Q And we're using the [REDACTED] million
20 number because it was in the proposal, but
21 would it have been possible for Tennis Channel
22 to get more than [REDACTED] million additional

1 subscribers?

2 A Yes.

3 Q And so did this statement mean
4 that if Tennis Channel stayed on the Comcast
5 sports tier, it would never have any equity
6 value?

7 A That's absolutely not what it
8 meant. You're reading it out of context. If
9 it stayed on Comcast's sports tier and it got
10 10 million subs it would be worth even more
11 than if had gotten Comcast's [REDACTED] million subs.
12 You've got to read it in the context of the
13 work that was being done.

14 Q Mr. Donnelly, do you know whether
15 or not this potential transaction involving
16 the U.S. Open, USTA, Tennis Channel, and
17 Comcast was ever actually proposed to anybody?

18 A I'm not aware that it was.

19 Q Mr. Donnelly, did there come a
20 time after this that Tennis Channel again
21 approached Comcast with an MFN offer?

22 A Yes, there was. In 2007, Comcast

1 was approached once more by Tennis Channel
2 with another offer.

3 Q And did that offer also come in
4 through the Cable Division?

5 A Yes. Again, under the MFN if
6 Comcast's existing contract with The Tennis
7 Channel, The Tennis Channel was required to
8 make a similar offer to Comcast because they
9 had just done a carriage equity with DirecTV,
10 a larger carriage equity deal and they came
11 back and they made a similar carriage for
12 equity proposed under the MFN.

13 Q And did you perform again an
14 analysis of the equity of Tennis Channel?

15 A We did. We performed a similar
16 analysis that we had done a year before. The
17 results were greater as a result of the
18 DirecTV launch, really was the biggest piece.

19 Q Can you just explain that for us.
20 When you say the results were greater, do you
21 mean that the equity valuation was greater?

22 A Sure. Actually, both sides were

1 greater. Let me go back then. We did the
2 same thing in July of 2007 that we did in July
3 of 2006. We took a look at the value that was
4 coming through equity and the value that was
5 going out through increased carriage fees. In
6 both cases, the value that came in was
7 greater. The Tennis Channel did get
8 incremental distribution just like our model
9 said. If it got more value it -- if it got
10 more subs, it would have more value. And the
11 valuation went up substantially, but the
12 request on Comcast Cable
13 also increased from [REDACTED] million subs to [REDACTED]
14 million subs so the value going out the door
15 also went up substantially.

16 Q And the increase in the sub
17 requirement, did that mean that there would be
18 a corresponding increase in licensing fees?

19 A Yes.

20 Q That's what we're talking about?

21 A Yes, that's correct.

22 Q Did you prepare a similar analysis

1 to the analysis that you did in 2006?

2 A Yes, we did.

3 MR. MOSS: May I, Your Honor?

4 JUDGE SIPPEL: Yes, please.

5 MR. MOSS: This is Comcast 66
6 which is also behind Tab C in the opening
7 exhibits binder. It's the second document
8 behind the first blue sheet. I have other
9 copies if anyone needs another copy.

10 Do you need another copy, Your
11 Honor?

12 JUDGE SIPPEL: I'll find it. It's
13 behind C.

14 MR. MOSS: Behind C in the white
15 binder. It's the second document. It looks
16 just like the first one, but it has a July
17 2007 date on it. It's behind the first blue
18 sheet.

19 JUDGE SIPPEL: You wouldn't
20 believe this, but I have found these before.
21 Yes, I've got it, July 2007.

22 MR. MOSS: Yes, thank you, Your

1 Honor.

2 BY MR. MOSS:

3 Q Mr. Donnelly, can you identify
4 Comcast Exhibit 66 for us, please?

5 A Yes, I can. This again is a
6 PowerPoint summary of the results of our work.
7 Again, this is just a summary deck we put
8 together setting the work up we do to get the
9 results.

10 Q And did you present an analysis to
11 Mr. Bond as to the comparison between the
12 costs and the benefits?

13 A Yes, we communicated these results
14 to the Cable Division.

15 Q And what was the -- what were
16 those results?

17 A In essence, again, the increased
18 costs to the Cable Division, money going out
19 the door for affiliate fees were in excess of
20 the equity value coming in.

21 Q And you said you performed a
22 similar equity valuation to the valuation you

1 had performed in 2006?

2 A That's correct.

3 Q Did you do a discount in cash
4 flow?

5 A We did. In more detail we did a
6 discount in cash flow analysis similar to what
7 we did in 2006. We once again started with a
8 business model that came to us from The Tennis
9 Channel. We kept the subscriber assumptions
10 similar to -- I think exactly the same, I'd
11 have to check. But to the numbers that were
12 provided to us and the only significant
13 assumption that we changed really was
14 advertising.

15 Q And in what way did you change the
16 advertising assumptions?

17 A Once again, we talked to our
18 assets people again and we felt that the
19 number was still inflated and we brought that
20 down in line with what we thought was a
21 reasonable expectation.

22 Q Do you know whether or not this

1 proposal was accepted or rejected by Comcast?

2 A I understand it was not accepted.

3 Q And do you have an understanding
4 as to why?

5 A I don't know why.

6 Q Did it have to do with the costs
7 and the benefits?

8 A I don't know. We did the
9 analysis. The decision is the Cable
10 Division's decision. We just did the
11 analysis.

12 JUDGE SIPPEL: They don't tell you
13 afterwards?

14 THE WITNESS: Well, they may.
15 Honestly, Your Honor, they came and asked us
16 to do an analysis. We finish it. We send it
17 over to them and I rarely follow up to find
18 out what they did. It doesn't affect my
19 business.

20 JUDGE SIPPEL: Doesn't pique your
21 curiosity either?

22 THE WITNESS: I mean I know the